O/Income Tax/1

1951 **File No.** 65/51

K Legal Department

9 **BRANCH**

Subject:— Opinion on the Indian Income Tax Act

(P 3/61)

O/Income Tax/51

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C O N T E N T S

Legal Department File No. O.Income Tax/51.

Sr.No.	R.I./O.No.	Subject.	Pages.
		Opinions under the Indian Income Tax Act.	
1.	C-470 29-9-51,	Section 46(5) and (5A). Civil Procedure Code, section 60 Re: Order served under section 46(5A) of the Act. Whether this order is subject by proviso (1) of section 60 of the Civil P. Code that is to say whether the first hundred rupees and half of the remainder of the salary would be exempt from the operation of the order.	1-2.
2.	C- 486 11-10-51.	Whether Government is liable to income tax on profits or income derived from trade or business carried on by it or on its behalf.	3-4.

JPE.24/7/56.5c.

Legal Department.

Indian Income Tax Act.1922

Section46(5) and (5A)

Civil Procedure Code.

Section 60.

An order under section 46(5A) of the Indian Income-tax Act, 1922, has been served on the Food Controller requiring him to withhold payment of salary to S.T.Shah until the arrears of income tax due from him are fully satisfied. The question raised for the consideration of the R.I.A. is whether this order is subject to the limitation prescribed by proviso (1) of section 60 of the Civil Procedure Code, that is to say, whether the first hundred rupees and half of the remainder of the salary would be exempt from the operation of the order.

The proper provision under which the requisition should have been made by the Income-tax authorities appears to be sub-section(5) and not sub-section(5A) of section 46 of the Indian Income-tax Act, 1922. Shri S.T.Shah is in receipt of a salary and there is a specific provisionx in sub-section(5) providing for recovery of arrears of income tax from such salaried servants. Sub-section(5A) of section 46 refers to cases where money is due or may become due to the assessee or which is held or may subsequently be heldx on behalf of the assessee. Salary due or which may subsequently become due is obviously outside the scope of sub-section (5A). Therefore, as stated before, the order of the Income Tax authorities should have been issued under sub-section (5) and not under sub-section (5A) of section 46. Also the salary is payable to Shri S.T.Shah by Government and not by the Food Controller on whom the order has been served. The Food Controller may write to the Income-tax Officer bringing to his notice these facts so that a legally proper order may be made by the Income tax authorities in supersession of the existing order. Also, in view of what Shri Shah

says.. ....

says in his petition at page 1 ante, the Income-tax authorities might be requested to consider recovering the amount in instalments to avoid hardship.

As regards the question whether the proviso (1) of section 60 of the Civil Procedure Code would apply to the present case, the reply is in the negative. Sub-section (2) of section 46 of the Indian Income-tax Act is as follows:

> "The Income-tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee, and the Collector, on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land revenue:
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> "Provided that without prejudice to any other power of the Collector in this behalf, he shall for the purpose of recovering the said amount have the power which under the Code of Civil Procedure,1908, a Civil Court has for the purpose of the recovery of an amount due under a decree."

In the present case the arrears of assessment are not being recovered through the Collector as arrears of land revenue under the provision of sub-section (2) of section 46. It will not, therefore, be open to the employer paying the salary on whom an order under sub-section (5) is served to grant the benefit of proviso (1) of section 60 of Civil Procedure Code.

Id/- ....

Additional Secretary to Government.

U.R. to FF.C. ,No. G-470,

dated the 29th September 1951.

Legal Department.

Article 289(1) of the Constitution of Indian provides that the property and income of a State shall be exempt from Union taxation. But sub-clause (2) of article 289 provides that nothing in sub-clause (1) of that article shall prevent the Union from imposing, or authorizing the imposition of any tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State or any operations connected therewith or any property used or occupied for the purposes of such trade or business or any income accruing or arising in connection therewith. It will therefore be seen that the Parliament can make a law providing for imposition of any tax in respect of trade and business of any kind carried on by or on behalf of the Government of a State. The Parliament has not yet made any law imposing income tax on income of the State Government from its cloth shops. Nor does there appear any provision in the Income Tax Act, 1922 applying the provisions of the said Act to the income of Government from trade or business carried on by Government as is specifically provided in respect of local authorities under section 4(3)(iii) of the said Act. The view taken by District Magistrate, Sabarkantha is, therefore, correct.

Id/ -- J.H.D.
10/10/

Remembrancer of Legal Affairs.

U.R. to S.T.C. No.G-486,
dated the 11th October 1951.

JPS 24/7/56.4c.